

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**DENNIS J. DUPRAY, as Beneficial Owner
and Managing Partner of TRACBEAM, LLC,
and TRACBEAM, LLC,
Plaintiffs,**

v.

**OXFORD INSURANCE COMPANY TN
LLC, and SERIES PROTECTED CELL 1, a
series entity of OXFORD INSURANCE
COMPANY TN LLC,
Defendants.**

**Civil Action No. 3:22-cv-01014
Judge Richardson / Frensley
Jury Demand**

ORDER

Pending before the Court is the Plaintiffs' motion for leave to file an amended complaint. Docket No. 90. The Parties have now filed a consent motion indicating the Defendants consent to the Plaintiffs' motion for leave to file the amended complaint and outlining their proposed schedule for Defendants to respond to the Amended Complaint. Docket No. 92. For the reasons set forth herein, the Plaintiff's motion for leave to file amended complaint (Docket No. 90) is **GRANTED** and the Parties consent motion for Plaintiff's motion to amend complaint and briefing schedule (Docket No. 92) is **GRANTED IN PART**. The Defendants' motion for judgment on the pleadings is **DENIED WITHOUT PREJUDICE**.

In the Parties' consent motion they indicate that the Defendants do not oppose the Plaintiffs' motion for leave to file amended complaint and propose a schedule for the Defendants to respond to the Amended Complaint by October 2, 2023. Docket No. 92. The Parties further propose that the Court allow Defendants to file an amended motion for judgment on the pleadings which includes an agreement that they "incorporate by reference their previous briefing in this matter for the Court's consideration in ruling upon the amended motion for judgment on the pleadings." *Id.* The consent

motion further sets out a briefing schedule on any motion for judgment on the pleadings whereby the Plaintiffs shall file any response on or before October 30, 2023, and the Defendants may file a reply by November 3, 2023. *Id.* The Parties assert that limiting briefing and incorporating the prior briefing “will be the most efficient use of the Court’s time and the Parties’ resources.” *Id.*

The Defendants’ motion for judgment on the pleadings (Docket No. 75) was based upon the Plaintiffs’ Second Amended Complaint (Docket No. 70). Because the Court has granted Plaintiffs’ motion for leave to amend (Docket No. 90) the Third Amended Complaint (Docket No. 94) is now the operative Complaint in this matter. As such, the Defendants’ motion for judgment on the pleadings (Docket No. 75) is **DENIED WITHOUT PREJUDICE**.

In the event the Defendants file a motion for judgment on the pleadings on the Third Amended Complaint, the motion should include all arguments rather than incorporating any previous briefings. The Parties should be mindful of the page limitations contained in Local Rule 7.01(a)(2) and should file an appropriate motion for leave in the event they cannot comply with the rule.

For the reasons set forth herein, Plaintiffs’ Motion for Leave to File an Amended Complaint (Docket No. 90) is **GRANTED**. In light of the Amended Complaint, the Defendants’ Motion for Judgment on the Pleadings (Docket No. 75) is **DENIED WITHOUT PREJUDICE**. The Defendants shall respond to the Plaintiffs’ Amended Complaint or before **October 2, 2023**. In the event the Defendants file a motion for judgment on the pleadings, Plaintiffs shall file any response by **October 30, 2023**. Defendants may file any optional reply limited to five (5) pages by **November 3, 2023**.

IT IS SO ORDERED.


JEFFERY S. FRENSLEY
United States Magistrate Judge